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# BIBLICAL JUSTICE AND MODERN MORAL PHILOSOPHY

Arthur F. Holmes

Recent writing on the concept of justice continues an Enlightenment tradition which departed markedly from the Biblical and classical heritage. Paradoxically, some segments of the Christian community have canonized that Enlightenment tradition, particularly its political and economic application, and tell us it had Biblical roots that America must recover. But if modern moral philosophy indeed departed from the Judao-Christian tradition, that kind of rerooting is a mistake. I want to highlight those departures, and in the process to point constructive directions, not for rerooting but for reconstructing a concept of justice, one that is more in keeping with the tradition of the Old Testament law and prophets (and certain aspects of classical philosophy) than with the philosophers of the Enlightenment.

The Enlightenment kind of paradigm, is represented by Immanuel Kant in *The Metaphysics of Morals*.

The [moral] concept of justice . . . applies only under the following conditions. First, it applies only to the external and . . . practical relationship of one person to another in which their actions can in fact exert an influence on each other directly or indirectly. Second, the concept applies only to the relationship of a will to another person's will, not to his wishes or desires (or even just his needs), which are the concern of acts of benevolence and charity. Third, the concept of justice does not take into consideration the content of the will, that is, the end that a person intends to accomplish by means of the object that he wills . . . . Instead, in applying the concept of justice we take into consideration only the form of the relationship between the wills insofar as they are regarded as free, and whether the action of one of them can be conjoined with the freedom of the other in accordance with a universal law.<sup>1</sup>

I want to look at this statement of Kant's in the light of four features of the Biblical paradigm, features which find closer parallels in classical than in modern moral philosophy.

1. The first of these Biblical features is the relationship between justice and



the law of God. God's *ordinances* are *just judgments* (one and the same root word is sometimes used for all three of those terms). The Mosaic legislation was to provide a *more just* society, and the prophets who preached justice called Israel back to the law of God. Justice and the law of God go hand in hand, in much the same fashion as our talk of God-given natural rights implies that respect for persons is a God-given obligation.

Several implications follow. First, the law of God applies equally to all, the wealthy and the powerful as well as the poor and the powerless. In fact again and again the powerful are called to account for oppressing people. Justice means treating people equitably, equal rights before the law. God is in that sense "no respecter of persons." This of course was a strength of the Enlightenment tradition.

A second implication is the deontological nature of justice commanded by God. This is lacking in many modern approaches—witness Elizabeth Anscombe's complaint that the notion of duty had lost its moorings, so that the concept of moral law was systematically excluded from modern moral philosophy.<sup>2</sup> But Immanuel Kant's thoroughly deontological emphasis is reflected not only in the last clause of the statement I have quoted ("in accordance with universal law"), but also in the exclusions of his second condition: the concept of justice "applies *only* to the relationship of a will to another person's will, not to his wishes or desires or . . . needs." The third condition adds "ends," thereby seeming to exclude all teleological considerations rooted in the nature either of human persons or of God.

Yet the classical and Biblical traditions were not as exclusively deontological as Kant seems at first to be. They were also teleological. Aristotle himself says "in one sense we call acts just that tend to produce and preserve happiness . . ."<sup>3</sup> Aquinas' definition of law includes a final cause. Law is:

an ordinance of reason *for the common good*, made by him who has the care of the community, and promulgated.<sup>4</sup>

And he goes on in *The Treatise on Law* to define a *just* law by reference to that end.<sup>5</sup>

This teleological aspect of justice is a third implication of its relation to Divine moral law and the one I want to stress most. Biblically, God's purpose in just laws relates to the kingdom of Shalom of which the Hebrew poets and prophets and the gospel speak. The content of the moral law is thus not an arbitrary imposition but, granted the nature of human persons and their relationships, it is essential to human wellbeing and so to Shalom. As I understand the concept, Shalom includes not only the absence of civil and international violence, not only the absence of oppression, not only equitable treatment for all persons, but also economic sufficiency for everyone ("they shall sit every man under his vine and under his fig tree" - Mic.4:4) and a human flourishing, combined with moral virtue, that elicits thankful celebration and sheer delight in God's creation.

But is a teleological notion altogether lacking in Kant? In his stated conditions regarding justice, yes. But what about his allusions to the kingdom of God in *Religion Within the Bounds of Reason Alone*? In that context, I find no reference to justice, although it is implied in the claim in book three that the kingdom of God is not a juridical state but an ethical state where non-coercive laws of virtue rule within each member of the commonwealth. If for Kant a virtuous person wills that end, her just decisions will have at least tacit reference thereto, whatever more immediate ends she might have considered.<sup>6</sup>

My point here is not that Kant's idea of the Kingdom of God is the Biblical ideal, nor that his concept of justice has that moral content. The point is rather twofold. First, if justice is tied to the Kingdom ideal, then justice is a teleological conception; and if justice is tied to divine law, then it is deontological also, and not the purely utilitarian concept which Mill made it. Second, the identification of justice with divine moral law and its consequent relation to a Kingdom of Shalom gives it content rather than form alone—something Kant's third condition denies: Kant's conception of the kingdom assumes that justice is a formal concept only. I return to this point later.

2. The second Biblical feature is that *justice is primarily virtue*, personal righteousness, and secondarily a quality of actions, decisions, and laws. Two Hebrew words are used. *Mishpat* refers to decisions, judgments or actions, particularly in juridical, political or economic contexts: we read, for instance, of doing justice as against perverting judgment, of the Lord's judgments being right, and of just weights and measures. The Septuagint and the New Testament translate it with *krisis*, and use the verb *anakrino*. I shall call this justice of judgments and actions "M-justice."

In contrast, the Hebrew term *tsadeq* (which I shall refer to as T-justice) speaks of personal righteousness. We read of a just God, and the patriarch Noah is referred to as a just man. T-justice includes devout faith and obedience to God's ordinances (M-justice): it therefore seeks M-justice for the oppressed. It is even ascribed to weights and balances, extending to them the unbiassed trustworthiness of personal rectitude. Overall, T-justice points to moral character as the inner telos of one's life.<sup>7</sup> No higher or more encompassing credential can be given than to pronounce someone righteous. T-justice says it all.

The parallel to Aristotle is obvious. The supreme good, the unifying inner telos of a person's life which he calls happiness, is the cultivation of excellence or virtue. Justice in his "universal" sense, "virtue entire," is lawabidingness, "that kind of state of character which makes people disposed to *do* what is just, and makes them act justly and wish for what is just."<sup>8</sup> "The just is the lawful and the fair."<sup>9</sup> This sounds much like the Biblical T-justice. Aristotle's particular justice, while still a virtue, comes close to M-justice, for there he addresses particular actions with which justice as virtue will properly be concerned. T-justice

is exhibited in doing acts of M-justice. What Aristotle lacks, of course, is the pervasively *religious* character of T-justice.

Justice as inner virtue is forgotten in much of modern moral philosophy. But what about Kant in this regard? In his case the picture is more ambiguous. "The moral concept of justice," he has told us, "applies only to the external and practical." And part 2 of *The Metaphysics of Morals*, in which he addresses the virtues, makes no mention of justice as a virtue. Virtue has to do with the self constraint of a rational being in obeying his duty, quite apart from inner inclination or desire. It is thus a duty to promote the wellbeing of others, but not out of benevolence nor out of T-justice, unless of course we equate T-justice with simply acting out of respect of duty.

3. The third feature of the Biblical (and classical) paradigm concerns *justice as social responsibility*. We observed earlier that the Biblical concept of justice has to do with responsibility to the moral law of God and to its purpose of Shalom. But Shalom is a societal thing, having to do with economic and political as well as individual and interpersonal matters. Justice therefore has to do with social responsibility. The prophets see M-justice as relieving the oppressed, and look for it in the operation of the judicial system and of good government. M-justice is not something apart from loving mercy: it stands up for the poor, the fatherless, and the cheated. It implements now, to whatever degree possible, the equitable social ideals of the Kingdom.

Christian ethicists tend to emphasize the intrinsic value of each individual created in God's image. Said Augustine, "by nature, as God first created us, no one is the slave either of man or of sin."<sup>10</sup> But M-justice implies more than simply respect for individuals as persons and their individual liberty. For persons in God's image are God's representatives in this world, entrusted with the care of his creation, serving God's purpose in this world. Their responsible stewardship in all the relationships of life is involved, responsible agency. M-justice amounts to acting responsibly towards others for the sake of Shalom.

In the Enlightenment tradition, on the other hand, justice is related primarily to individual rights and liberties. John Locke's state of nature, for example, was one of complete freedom, without even the responsibilities of marriage and family, let alone citizenship, and the individual's right to freedom must always be preserved. And Immanuel Kant reduces the distinctive concerns of justice to individual freedom of will. That emphasis is clear enough in his three conditions I cited above, but see also how he states the universal principle of justice:

Every action is just that in itself or its maxim is such that freedom of the will of each can co-exist together with a universal law.<sup>11</sup>

Or again, under the subheading, "There is Only One Innate Right":

Freedom (independence from the constraint of another's will), insofar

as it is compatible with the freedom of everyone else in accordance with a universal law, is the sole and original right that belongs to every human being by nature of his humanity.<sup>12</sup>

Kant's ideal kingdom of autonomous moral wills rules all else. The emphasis is on the right to liberty alone, rather than on broader aspects of justice as responsibility for Shalom. It is as if the inner telos of one's life is complete freedom, not moral virtue, and freedom alone brings happiness; and the social telos, insofar as there is one, is the maximization of every individual's freedom. No larger goal, no other moral concerns, no richer wellbeing is suggested. In the words of Rawls' first principle of justice:

. . . each person is to have an equal right to the most extensive liberty compatible with a similar liberty for others.<sup>13</sup>

The real worth of this Enlightenment tradition must not be minimized: it is the insistence on equitability, each and every person having equal rights, in contrast to tyrannical practices and to the aristocratic structure of the Greek political scene. Yet the concept of freedom has gone awry. First, it is a negative freedom, freedom *from* something, rather than a positive freedom *to* something. The lack of that teleological element in justice carries over into freedom. Biblically, on the other hand, freedom is not political or economic autonomy, not primarily at least, nor is it simply freedom from the tyranny of sin, essential though that is to the overall picture. Freedom is rather freedom to serve responsibly from the heart, freedom to act for Shalom. Freedom reduced to individual negative freedom is not M-justice; nor is a kingdom of autonomous wills *per se* the kingdom of Shalom.

The difference goes back to the underlying views of persons. Biblically, a person is by nature a relational being, divinely entrusted with responsibility for nature and for other persons.<sup>14</sup> She finds identity and purpose in relationships and responsibilities. For Aristotle, too, a person is by nature a social animal, with social responsibilities. The Enlightenment understanding was far more individualistic, influenced as it was by the atomistic picture of the physical world. That much is widely recognized, but some critics go further. In *The Political Theory of Possessive Individualism*, a study of the roots of liberal-democratic theory from Hobbes to Locke, C. B. MacPherson reports that the individual was regarded as sole proprietor of his own person and capacities, owing nothing to society for them. The individual is neither a moral whole, nor part of a larger social whole, but is an independent atom, owner of himself. Society then is a collection of free individuals relating to each other as do property owners, and a political society is a calculated device for the protection of this property and for an orderly relation of exchange.<sup>15</sup> Neither property ownership nor labor as

such, it seems, involve any positive social responsibility.

Locke traced property ownership to mixing one's labor with the lands God provided, adding the proviso that since God's providence is for all one should leave enough for others. But this overlooks the fact that the life and ability labor requires are equally God's provision too. Even my labor is not my own private possession. Biblically, the earth is the Lord's and the fullness thereof, including my labor: this means that economic activity and economic justice are alike matters of responsible stewardship rather than of freedom in regards to acquisition and entitlement rights.

In parallel fashion, Aristotle distinguished between natural and unnatural property acquisition, in terms of its purpose or final cause.<sup>16</sup> It is not simply *how* something is acquired that is morally significant, but also *why*, for what end? This teleological element, in the Biblical picture, keeps freedom from being just a negative concept, negative rights.

But a second point remains regarding M-justice as social responsibility, and regarding social structures. Enlightenment individualism developed contractarian social and political theories: wholly free individuals agree out of "enlightened" self-interest to structure the community in freedom-restricting ways. From a Biblical point of view again difficulties arise, depending on how seriously the contractarian notion is taken. On the one hand, social contract may simply be a way of speaking about the consent of the governed, and with that I have no quarrel. Aquinas may not be the final authority in all matters of faith and practice, but he does observe that the consent of the whole people can count more than the authority of the sovereign.<sup>17</sup> On the other hand contractarians speak about economic and political matters as if the ultimate source of all power lies in totally free individuals who, in Paul Ramsey's words, "remain as atomistic as before."<sup>18</sup>

Listen to Kant:

The act by means of which the people constitute themselves a state is the original contract. More properly it is the idea of that act that *also* enables us to conceive of the legitimacy of the state. [That sounds like a necessary and sufficient condition.] According to the original contract, all the people give up their external freedom in order to take it back again immediately as members of a commonwealth.<sup>19</sup>

Aristotle on the other hand recognized that we are *by nature* political animals. It is *by nature* that families and civil society exist. And Biblically, family and work and government, as well as the church, are ordained by God as Shalom-contributing structures of human life. This I take to underlie the Christian natural law jurisprudence and political theory from which modern moral and social philosophy departed. Theologians also speak of creation orders or mandates with intrinsic ends that are not dependent only on human will and contract.<sup>20</sup> Justice

as social responsibility exercised by institutional means, is still responsibility for Shalom.

4. The final feature of the Biblical (and classical) paradigm which I want to stress concerns *the content of M-justice*. The theory of human rights is of course one way of spelling that out, but how we define those rights will obviously depend on what we think about human persons.

(1) To begin with, if we emphasize that we are all equally persons (or equally in God's image, or some similar formula), then with the Enlightenment tradition we will emphasize *equal human rights*. Plato and Aristotle avoided this inference because their views of persons included the aristocracy of reason, which accorded to some more rights and privileges than others. Aristotle claimed that those who have not the rational ability to rule themselves are "by nature" slaves.<sup>21</sup> A more egalitarian note is struck by Francisco da Vitoria in his treatment of just war. The Indians are equally human beings in God's image, and so should be accorded equal rights with the Spaniards, despite differences of race, religion and degree of civilization.<sup>22</sup>

John Rawls' second principle in its revised formulation is also egalitarian, although it goes further.

Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices or positions open to all under conditions of fair equality of opportunity.<sup>23</sup>

Rawls plainly recognizes that we may be equally persons but unequal in other regards, like necessities and opportunities in life. He treats such things as matters of justice too, as related to rights, for more needs saying than just the near tautology that all persons have equal worth as persons and should therefore be accorded equal human rights.

(2) On the other hand, we have seen that if we make individual freedom of the will the essential characteristic of persons, as Kant did, then justice applies

to the relationship of a will to another person's will, not to his wishes or desires (or even just his needs), which are the concern of acts of benevolence or charity.

In that case, only *negative rights* will be stressed, the right not to be forced against my will, hence not to suffer involuntary violence or intrusion by others. In Nozick's terms, it means that a just acquisition gives the individual permanent and unqualified property rights, as long as that acquisition does not prevent others from freely utilizing their own previous acquisitions.<sup>24</sup>

Noticeably an emphasis on negative rights pervades the Old Testament—its repudiation of extortion, unjust violence, discrimination against the powerless,



and, in general, oppression. Some have supposed that poverty in ancient Israel was due to the fact that the tribal economy, established by land distribution after the settling of Canaan, broke down with the emergence of an oppressive monarchy on the model of other Oriental potentates. In that case, providing for the poor was a form of compensatory justice, based on negative rights. But as Herbert Schlossberg points out, that would not mean that all poverty is always due to oppression.<sup>25</sup> What of life's necessities in those cases? Are they, as Kant asserts and Nozick implies, to be left to charity? Is that just, in terms of justice as responsibility for Shalom?

The conception of persons as responsible agents, stewards of God's creation, points in the direction of *positive rights*. Emil Brunner claims that human rights are necessary to fulfilling the end to which the human person is created.<sup>26</sup> And Max Stackhouse cites the United Church of Christ pronouncement:

. . . the fundamental human right which gives the human being his or her dignity is also an obligation to serve and to help in the creation of the conditions for life in the whole creation. The fundamental human right is the right to be responsible to God. . . . rights are given by God as the means for all human beings to fulfil their duties before God's righteousness.

Thus human rights are what people need in order to fulfil their fundamental task of becoming a human person, that is fulfilling their calling as the image of God.<sup>27</sup>

Notice where this leads. Kant says (again in that long statement of conditions):

the concept of justice does not take into account the content of the will, that is, the end that a person intends to accomplish by means of the object that he wills . . . [but] only the form of the relationship between the wills insofar as they are regarded as free . . . .

If justice is so defined with basic reference to freedom, it provides only a formal principle, not a content of moral responsibility. But the connection between justice and moral law, along with the teleological element in justice as responsibility for Shalom, does give content. Hence, justice cannot be defined Biblically with Kant-like reduction to freedom and so to negative rights alone. Kant, I take it, is mistaken about all three conditions in his concept of justice, and with him today's Enlightenment-type ethicists who adopt his paradigm. (a) Justice as a moral concept does not apply only to the external and to actions, but also to inner virtue. (b) Justice is not only, nor primarily, a matter of individual negative freedom, for it relates to the end of Shalom. (c) Justice does have content, not just form.

What sort of content, beyond the requirement of equitable treatment, and

therefore freedom from oppression, is implicit in the concept of justice as acting responsibly for Shalom? Consider Alan Gewirth's claim that an agent, pursuing her own action projects claims rights which are essential to successful action: universalized by his Principle of Generic Consistency, all prospective purposive agents have such rights. Gewirth goes on to talk of basic rights to the necessary conditions for performing any or all actions, in distinction from less needful non-subtractive rights, loss of which would lower one's level of purpose fulfillment, and still lower priority additive rights that would raise that level.<sup>28</sup>

The analogy is obvious except that my case is cast in a Biblical context. If M-justice means acting responsibly for Shalom, it presupposes the right to what is *necessary* to acting responsibly for Shalom.

(3) What then is the *necessitarian element* in M-justice, conceived as acting responsibly for Shalom? *First*, it includes what is needful economically, emotionally and educationally for one to function as a contributing member of society. *Second*, it includes the freedom to engage in constructive activities, and to participate in the institutional life of society (for social institutions, as I suggested earlier, should also contribute responsibly towards Shalom). Hence the right to marry and raise children, the right to do useful and satisfying work, the right to constructive political involvement. This plainly goes beyond sustenance rights and negative freedom.

M-justice is therefore not simply a matter of preserving individual rights and freedoms, although it includes those freedoms required for contributing to Shalom. It points in a less individualistic and more socially responsible direction than much of modern moral philosophy. As a result, liberation movements become ultimately social responsibility movements. "Women's lib" means women are free and able to become more societally involved and responsible. Academic freedom expands into both the right and the responsibility to work on socially significant problems (that may not at present be professionally rewarding). Justice means more than freedom, more than treating people fairly. It has positive societal intent. Its concern for the oppressed is not just for their lack of individual freedoms, but for their larger lack of Shalom and their inability to contribute to Shalom.

Whether people will in fact act responsibly to this end—peace, both civil and international, economic sufficiency and equitable treatment for all persons, and a human flourishing that elicits thankfulness, celebration and delight—that is another question. Three factors might prevent them: lack of the necessities it would require, lack of freedom to do so, or lack of virtue. The first two of these, I have argued, are matters of M-justice itself. The third is a matter of T-justice. In effect, then, the four features I have identified in the Biblical paradigm are parts of a coherent whole. Justice, let me repeat, is (a) *like the law of God* in that it (b) *relates to virtue* as well as to (c) the *necessities* for a life of *positive*

*freedom in (d) the service of Shalom.*

Finally, there are two questions I have not addressed: how society might be structured in the interests of M-justice, and how it might work out in business, environmental, medical, political and other areas of applied ethics. I have tried only to show how M-justice differs from some more familiar influential views, not how its requirements might be met in practice.

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## NOTES

1. *The Metaphysical Elements of Justice*, part I of *The Metaphysics of Morals*: (Bobbs-Merrill, 1965), p. 34.
2. "Modern Moral Philosophy", *Philosophy*, xxxiii (1958). 1-19. See also Jeffrey Stout, *The Flight from Authority* (University of Notre Dame Press, 1981).
3. *Nic. Ethics*, 1129b. 18-19.
4. *Treatise on Law, S.T.* II-I. Q.90, Art.4. (emphasis is mine)
5. *Ibid.*, Q.96, Art.4.
6. See Thomas Auxter, *Kant's Moral Teleology* (Mercer University Press, 1982), who points to a moral teleology in Kant's *Critique of Judgment* and in his moral argument for the existence of God, a teleology that is often obscured by the hard division between virtue and just action in *The Metaphysics of Morals*. Also J.B. Schneewind, "The Divine Corporation and the History of Ethics," ch.8 in R. Rorty, J. B. Schneewind and O. Skinner (eds.), *Philosophy in History* (Cambridge University Press, 1984).
7. For example, see C. J. H. Wright, *An Eye for an Eye* (Inter-Varsity Press, 1983), ch.6.
8. *Nic. Ethics*, 1129a. 7-10.
9. *Ibid.* 1129b.1.
10. *City of God*, XIX. 15.
11. *Elements of Justice*, p.35.
12. *Ibid.*, p.43f.
13. *A Theory of Justice* (Harvard University Press, 1971), p.60.
14. See Russell Shedd, *Man in Community in the Old Testament* (Epworth Press, 1958).
15. *The Political Theory of Possessive Individualism* (Clarendon Press, 1962), p.3. A plain instance is Robert Nozick's *Anarchy, State and Utopia* (Basic Books, 1974), with its justice as acquisition rights.
16. *Politics*, I.8-9.
17. *S. T.* II-I, Q.97, Art 3, Reply Obj.3.
18. *Ethics at the Edges of Life* (Yale University Press, 1978), p.9. See also part IV of George Parkin

Grant, *English Speaking Justice* (1st published 1974, University of Notre Dame Press, 1985).

19. *Elements of Justice*, p. 80.

20. E.g. Emil Brunner, *Justice and the Social Order* (Harper, 1945), p.67. Cp. A. F. Holmes, *Contours of a World View* (Eerdmans, 1983), ch. 11.

21. *Politics*, 1254b. 15-1255a.3.

22. *De Indiis*, excerpted in *War and Christian Ethics*, ed. A. F. Holmes, (Baker Book House, 1975), pp.118-136.

23. *Op.cit.*, p.83.

24. *Op.cit.*, pp.178-182.

25. *Idols for Destruction* (Thomas Nelson, 1983), p.326.

26. *Op.cit.*, p.63.

27. Appendix IV to Max Stackhouse, *Creeds, Society and Human Rights* (Eerdmans Publishing Company, 1984), p.284.

28. *Human Rights*, (University of Chicago Press, 1982). The Introduction provides a helpful summary.